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2 A P P E A R A N C E S:

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LAW OFFICES OF BRUCE A. BARKET, P.C.

Attorneys for Plaintiff

666 Old Country Road

Garden City, New York 11530

BY: BRUCE A. BARKET, ESQ.

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-against-

SUFFOLK COUNTY DEPARTMENT OF LAW

H. Lee Dennison Building

6th floor

100 Veterans Memorial Highway

P.O. Box 6100

Hauppauge, New York 11788

BY: RICHARD T. DUNNE, ESQ.

Assistant County Attorney

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Defendants.

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ALSO PRESENT:

John Scott Prudenti

Daniel Worship

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100 Veterans

Memorial Highway

Hauppauge, New York

June 5, 2007

11:43 a.m.

EXAMINATION BEFORE TRIAL of

CHRISTOPHER NICOLINO, one of the Defendants
in the above-entitled action, held at the
above time and place, pursuant to Notice,
taken before Eileen Savino, a shorthand
reporter and Notary Public within and for the
State of New York.

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2 C H R I S T O P H E R N I C O L I N O,
3 the witness herein, having first
4 been duly sworn by a Notary Public
5 of the State of New York, was
6 examined and testified as follows:
7 EXAMINATION BY
8 MR. BARKET:
9 Q. State your name for the record,
10 please.
11 A. Christopher Nicolino.
12 Q. State your address for the record,
13 please.
14 A. Building 77, North County Complex,
15 Veterans Memorial Highway, Hauppauge,
16 New York 11788.
17 Q. Good afternoon.
18 A. Good afternoon, Mr. Barket.
19 Q. Have you ever been deposed before?
20 A. I have.
21 Q. In what context?
22 A. The one that sticks out is a slip
and fall on my property, some time in the mid
1990s.
23 Q. Other than that?

1
2 IT IS HEREBY STIPULATED AND AGREED by
3 and between the attorneys for the respective
4 parties:
5 That all rights provided by the CPLR,
6 including the right to object to all questions
7 except as to form, or to move to strike any
8 testimony at this deposition, are reserved
9 for trial; and that failure to object to any
10 question, or to move to strike any testimony
11 at this deposition shall not be a bar or
12 waiver of the right to make such objection or
13 motion at the trial of this action.
14 That this deposition may be sworn to
15 by the witness before any notary public; and
16 the failure to do so, or to return the
17 original transcript to counsel for the party
18 on whose behalf it was taken, shall not be
19 deemed a waiver of the rights provided by
20 CPLR Rule 3116, and shall be so controlled.
21 That the filing and certification of
22 this examination are waived.
23 That a copy of this examination shall
be furnished without charge to the attorney
24 representing the witness testifying herein.

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Christopher Nicolino

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Christopher Nicolino

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- Q. When did you graduate from college?
A. '85.
Q. Did you go from high school to college to law school?
A. Yes, I did. The traditional route.
Q. If we go backwards in your career, you are currently an assistant district attorney. What unit are you assigned to?
A. I am the Deputy Bureau Chief of the Economic Crime Unit.
Q. How long have you had that position?
A. At or near the time Mr. Spota assumed office in 2002.
Q. Prior to that, where did you work?
A. Prior to that, I worked in the County Attorney's Office in Suffolk County.

- Q. What position did you have there?
A. Principal assistant county attorney.
Q. Did you supervise the entire office or a portion of it?
A. In my apprenticeship or as a county attorney?
A. I don't recall any other times.
Q. Have you ever been a party to a civil lawsuit?
A. That was a lawsuit.
Q. Other than that?
A. Not that I recall.
Q. You are currently an assistant district attorney in Suffolk County?
A. I am.
Q. Are you a member of the Bar of the State of New York?
A. I am.
Q. When did you become a member?
A. 1988.
Q. Where did you graduate law school?
A. University of Bridgeport, Quinnipiac.
Q. What year did you graduate?
A. 1988.
Q. Where did you go to college?
A. American University.
Q. What did you get your degree in?
A. I had an honors from Poly Sci, SGPA degree with an English minor.

Christopher Nicollino 8

2 Litigation Bureau and the Torts Bureau.

3 Q. Did you work with Mr. Dunne at that
4 time?

5 A. I did not.

6 Q. Did you know him?

7 A. I've known Mr. Dunne.

8 Q. Prior to working at the Suffolk
9 County Attorney's Office, where did you work?

10 A. The U.S. Attorneys Office for the
11 Eastern District of New York.

12 Q. How long were you working there?

13 A. Three years, thereabouts.

14 Q. Can you tell me the dates that you
15 worked at the DA's office from '02 until the
16 present? When did you work for the County
17 Attorney's Office?

18 A. Can I do it the other way? It's
19 easier for me to do it the other way.
I started as an attorney in '88 and
20 went to work in the District Attorney's
21 Office. I left there, I think, in '91 and
22 went to work in the U.S. Attorney's Office.
23 I left there in '93, '94, I forget, and went
24 to work in the County Attorney's Office. I
25

Christopher Nicolino 10

2 attorneys have been disqualified and shadow
3 counsel has been appointed for cooperating
4 defendants without the knowledge of their
5 defense attorneys.

6 MR. BARKET: Off the record.

7 MR. DUNNE: Okay.

8 (Whereupon, a discussion was
held off the record.)

9

10 Q. Can you tell us what shadow counsel
11 is?

12 A. Shadow counsel is a process whereby
13 a defendant in a criminal case who is
14 represented by one attorney has a second
15 attorney appointed to represent him without
16 the knowledge of the first attorney because
17 that attorney has some sort of, and it
18 varies, but some sort of conflict or problem
19 in the honest and fair representation of that
20 criminal defendant necessitating a second
21 attorney to preserve that defendant's rights
22 and enable that defendant to cooperate
23 truthfully.

24 Q. What would prohibit or prevent the
U.S. Attorney's Office from simply

Christopher Niccolino
left there in 2002 to go to work for
Mr. Spota in the District Attorney's Office.
That is my resumé.

Q. In the U.S. Attorney's Office,
where did you work?

A. I worked in Garden City in the Long
Island Bureau and in Brooklyn in the General
Crimes Bureau.

Q. The Long Island Bureau is also
general crimes?

A. Well, they didn't call it that. It
was the Long Island Bureau. We handled
everything. We handled a whole caveat of
different crimes. Some of the things that we
did were narcotics and guns and things that
were outside the realm of general crimes.

Counterfeiting. We did counterfeiting as
well.

Q. Did you deal with individuals who
were cooperating defendants?

A. Yes.

Q. Did you ever move to disqualify an
attorney from representing a defendant?

A. I've been involved in cases where

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Christopher Nicolino

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person is because there would be a fear that
the attorney would then report back to the
other people that he or she had been
disqualified, thus, leaving those individuals
to conclude that the defendant was

cooperating?

A. Yes. It happens with defense

attorneys sometimes, believe it or not.

Q. I do believe it.

A. They're all not as honest and
forthcoming as you, Mr. Barket.

Q. Well, I don't cooperate people. So
there may be a few shadow counsels in my
life, and I don't know it.

Did you become aware of a potential
conflict between Mr. O'Connell representing
Mr. Worship in this case?

A. Yes, I did, and I addressed that
with Mr. O'Connell.

Q. In what capacity did you address
that? How did you do that?

A. Well, I knew that when
Mr. O'Connell brought Mr. Worship in for the
proper session that we had some time in -- I

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Christopher Nicolino

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disqualifying the attorney representing the
individual in open court?

A. Because then the fact of the
cooperation would become known to the other
targets, defendants, parties to that criminal
action.

Q. So if we can kind of break this
down, in the context where shadow counsel is
appointed, I take it that your concern was
that the attorney representing the potential
cooperator had a relationship with some of
the other targets?

A. Absolutely. That's one scenario.
Q. What you would hope is that the

person would cooperate against these other
individuals and obviously couldn't do it with
an attorney that knew them or represented the
other targeted individuals?

A. Well, shadow counsel only kicks in
when the defendant in question indicates a
desire to cooperate. You have to get to that
point first.

Q. But the reason why you wouldn't
simply be able to move to disqualify the

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Q. You expressed that to him?

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ON TIME COURT REPORTING

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Christopher Nicolino

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Detective Icapelli and Detective Amato at a

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Christopher Nicolino

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7-Eleven in Patchogue?

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entrance to my building.

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Q.

Following that, did you take any

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steps to have Mr. O'Connell disqualified?

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A. There was no reason to at that

6

point, because Mr. Worship had not indicated

7

a willingness to cooperate and it was a

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wivable conflict at that point, and, in

9

fact, I believe, Judge Weber at some point

10

addressed that to both Ms. Strelbel and

11

Mr. Worship prior to beginning our criminal

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proceedings in County Court.

13

Q. Short answer is no, you didn't do

14

anything to have him disqualified?

15

A. Well, there was no reason to up

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until that -- at that point.

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Q. So you didn't do anything?

18

A. I said no, I said there was no

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reason to at that point.

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Q. You obviously didn't seek to have

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that shadow counsel appointed?

22

A. Again, no, because there was no

23

reason to at that point.

24

Q. Did you become aware of a meeting

25

that took place between Mr. Worship,

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Christopher Nicolino

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represent Mr. Worship if he was cooperating,
and Ms. Strebel, if she was being prosecuted
as a criminal defendant.

Q.

What instructions, if any, did you give Detective Amato or Detective Icapelli in this regard?

A.

I don't recall.

Q. Did you tell them to stop talking to Mr. Worship?

A. I don't recall what was discussed in that.

I believe you're aware that there was a division of labor in this case because the case developed into multiple targets and multiple jurisdictions throughout the course of the investigation. My focus primarily was Mr. Milvid and then, of course, Ms. Strebel, because that's what flowed out of my part of the investigation. There were other things going on in Patchogue at the time, other investigations. There was Mr. Worship and his conduct in running the Highway Department, but there were also allegations that there was some criminal wrongdoing in

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Christopher Nicolino

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A. No. Because, again, at that point, there was no reason to do that. Mr. Worship had not been what we call signed up, as you might know from your criminal defense work.

You want to bring in the cooperating defendant and actually sign an agreement with him, a cooperation agreement, that details the nature and extent of his cooperation, what benefits he will receive, what benefits the office will receive, et cetera, and he hadn't been signed up yet. So in order to do that and get to the point where we could sign him up, he would have to take a few more steps first.

Q. What steps would he have to take?
A. Well, he would actually have to start showing a willingness to cooperate fully, some acknowledgement of culpability. He would have to try and obtain other representation other than Mr. O'Connell, because, as I said, Mr. O'Connell was representing the targets in the grand jury investigation of Ms. Strebel. So he certainly couldn't be in that position to

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Christopher Nicolino

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A. Well, no. That's an unfair characterization of my answer. My answer is that's not my role. I would have no reason to tell them yes or no. That's my answer.

Q. When did you become aware that they had met with Mr. Worship?

A. Again, I don't recall when. It was

subsequent to that meeting.

Q. Subsequent to?

A. To their chance meeting at what you described as a 7-Eleven.

Q. How long after?

A. I wouldn't even want to guess. I'm not sure. It wasn't the next day. It was

some time after that, and I don't know if it was weeks or months.

Q. Was it the year after that?

A. I don't think it was that long, no.

Q. Did you learn at any point in time that Mr. Amato was having phone conversations with Mr. Worship?

A. I learned of that after I learned that they had met Mr. Worship at what you had described as a 7-Eleven when Mr. Tenari came

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Christopher Nicolino

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connection with the rehabilitation of the Patchogue theater, and there were other allegations that the mayor might be involved in that, Mr. Keegan. So he was a potential target of some of these investigations.

And there were other allegations of wrongdoing in and around Patchogue that I tangentially knew about because of my involvement with Mr. Milvid and Ms. Strelbel

and because of Mr. Worship's involvement with Mr. Milvid. So I knew about some of those things, but I wasn't the day-to-day guy conducting those investigations.

Did you get all that? I know it's kind of convoluted.

Q. Well, my question was, after you learned of the meeting between Detective Icapelli, Detective Amato and Mr. Worship, did you tell Detective Amato and Detective

Icapelli to stop talking to Mr. Worship? A. And I'm indicating to you that that was not my role in the investigation.

Q. So the answer would be no, you didn't tell them that?

Christopher Nicollino 24

1 the dealer part of it and so, the Government
2

3 Corruption Bureau.

4 Q. Who were the investigators
5 reporting to or supposed to report to
6 concerning their contact with Mr. Worship?
7 A. Well, that --
8 Q. Let me back up a minute and --
9 A. Okay, go ahead because I don't know
10 that I can answer that the way you phrased
11 it.
12 Q. Let me see if I follow some of
13 this.
14 The District Attorney's office is
15 conducting this investigation into Mr. Milvid
16 and his dealings; is that right?
17 A. That's correct.
18 Q. At some point in time, Mr. Worship
19 came on the radar screen, for lack of a
20 better phrase, as a potential target or at
21 least a witness with respect to --
22 A. Milvid.
23 Q. -- Mr. Milvid; is that right?
24 A. Milvid, that's right because --
Q. Then --

Christopher Nicolino 23

there was somebody supervising that. Okay,
well, again, it's rather convoluted because
of the multiple facets of that investigation.
My investigation kind of tailed into what was
a government corruption bureau investigation.
I do the labor law stuff and prevailing wages
and that sort of thing and that's how I
became aware of Mr. Milvid. That's what led
to Ms. Strebel and that's what subsequently
led to Mr. Worship. That bumped into a
government corruption investigation, a
Government Corruption Bureau investigation
that was ongoing regarding Patchogue and its
theater and Mr. Worship and some of the
things that were going on there with the
Highway Department and Mayor Keegan, as I
indicated earlier, et cetera.

So who was overseeing the Patchogue
investigation? I mean, I had the part of
Mr. Worship paying too much for sidewalk and
curbing in the Village and allowing
Mr. Milvid to overbuild the Village. You
know, that was mine because it was a
construction and labor thing. I didn't have

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Christopher Nicolino

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2 Mr. Milvid. Ah-hah. So now Mr. Worship now
3 is becoming closer to the center of the radar
4 screen. He's moving into my investigation
5 more prominently because of these contacts
6 and connections.

7 Then we start looking, as I
8 indicated earlier, at some of the work that
9 was done by Milvid in Patchogue. We start
10 seeing the same sort of patterns of
11 over-billing and the invoices being signed
12 off on, not by Ms. Strebler this time but by
13 Mr. Worship, some of the other problems with
14 the work that was being performed that we
15 looked at, et cetera.

16 So he is working his way into my
17 investigation. He was already -- and this is
18 an assumption. I don't know this to be true,
19 but I assume he was already part of the other
20 Government Corruption Bureau investigation in
21 Patchogue, but he's now worked his way into
22 my investigation.

23 Does that make it any clearer?

24 Q. Then there came a point in time
25 when you went to speak to Mr. Worship; is

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Christopher Nicolino

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2 A. Let me finish my answer, if I
3 could.

4 Mr. Worship comes on the radar
5 screen. We know of Mr. Worship's
6 relationship with Mr. Milvid. We already
7 know that. There have been complaints going
8 back a year earlier by members of
9 Mr. Milvid's crew, that they're not getting
10 paid what they should. And as a labor
11 enforcement guy, I'm interested. So we know
12 that Worship's in the mix.

13 When we do the search warrant at
14 Mr. Milvid's offices, we find Mr. Milvid's
15 rolodex. Mr. Milvid's rolodex, the card with
16 the most information on it is Mr. Worship's,
17 the one with Mr. Worship's name. It's got
18 his cell phone numbers, his mother's number,
19 his home number, his office number. It's got
20 a ton of contact information for Mr. Worship.
21 Ah-hah.

22 As we're going through some other
23 documents seized from Mr. Milvid, we see the
24 Worship name again. We see that
25 Mr. Worship's son has been employed by

1 Christopher Nicolino 28
2 A. I can't answer it as a Yes or no
3 question.
4 Q. Did there come a point in time
5 where you asked detectives working in the
6 District Attorney's Office to contact
7 Mr. Worship?
8 A. No.
9 Q. How was Mr. Worship contacted to
10 come in to this meeting that took place with
11 Mr. O'Connell and Mr. Prudenti?
12 A. I don't know. You'd have to ask
13 Mr. Worship.
14 Q. Well, I'm asking -- your office
15 requested the meeting; is that right?
16 A. Of Mr. O'Connell.
17 Q. And Mr. Worship?
18 A. Of Mr. O'Connell.
19 Q. I'm sorry?
20 A. Well, our contact was with
21 Mr. O'Connell.
22 Q. Right.
23 A. That's what I'm indicating here. I
24 don't know how --
25 Q. How did your office --

Christopher Nicolino
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4 We're looking at this stuff. I told you. We
5 see the rolodex. We see the son. We start
6 looking at some of the numbers that are on
7 the rolodex, and we find --

8 Q. Simple question. Did there come a
9 point in time when you went to speak with
10 him; yes, there came a point in time when you
11 went to speak with him; no, there came a
12 point in time that I never went to speak with
13 him?

14 A. I have to put it in context.

15 Q. I don't want the context. I just
16 want an answer to that particular question.

17 A. I can't answer it the way you posed
18 it.

19 Q. Did there --

20 A. If you want, I will be happy to
21 explain the context.

22 Q. Did there come a point in time
23 where you made a decision to try and speak
24 with Mr. Worship as part of your
investigation? Yes or no?

Christopher Niccolino 30
1 that were discussed, but it became very
2 clear -- my recollection is that it became
3 very clear very early that Mr. O'Connell's
4 purpose in attending the meeting was not to
5 try and work out a cooperation agreement with
6 Mr. Worship, but rather was to try and feel
7 us out to see what kind of case and how
8 strong a case we had regarding Mr. Worship
9 and that he was probing along those lines and
10 had no inclination or intention to offer
11 Mr. Worship as a cooperator, and that's what
12 prompted my comment to him outside the
13 office, that it wasn't very fair to
14 Mr. Worship to treat him that way, given the
15 conflict that Mr. O'Connell had.
16 Q. You know, they say that lawyers
17 make the worst witnesses.
18 A. I'm sorry. I didn't mean to
19 disappoint you.
20 Q. You haven't disappointed me. If
21 Mr. Dunne wants to ask you questions and put
22 stuff in context and do things, he's free to
23 do that.
24 A. No, I understand that.

1 Christopher Nicolino 32
2 recollection of everything that was said.
3 Q. In sum and substance, what was
4 said?
5 A. Again, I don't have a verbatim sum
6 and substance recollection. I can remember
7 Mr. Prudenti saying at one point to
8 Mr. O'Connell, "That's not the way it works.
9 We don't show you all our cards." I remember
10 that part playing reference, taking place at
11 some point during the meeting.
12 I recall, in sum and substance, I
13 don't know if these were the precise words
14 used, Mr. Prudenti telling Mr. O'Connell,
15 "Listen. You have to come forward, and there
16 has to be some recognition that something
17 wrong has been done, and we will try and work
18 with you and try and see what we can do to
19 help your client." And I remember
20 Mr. O'Connell saying, you know, trying to
21 probe, and I don't remember what words he
22 used, but trying to probe to find out exactly
23 what kind of case we had, what kind of
24 evidence we had, what kind of charges we were
25 considering bringing against Mr. Worship and

1 Christopher Nicolino 31
2 Q. You understand that you need to
3 answer the questions that I ask.
4 A. I'm trying to answer them as
5 completely as I can.
6 Q. You understand that you need to
7 answer just the questions I ask, not to try
8 to put your answers into context.
9 A. Well, I want to give you a full and
10 complete answer whenever I can.
11 MR. DUNNE: Mr. Barket, he's
12 been instructed to answer the
13 questions that are asked, but if
14 it's going to create a
15 misapprehension or sometimes, you
16 know, that you can't answer a
17 question yes or no. That's the
18 purpose of cross-examination.
19 Q. What was said? I don't want to
20 know what your impressions were, not what you
21 thought Mr. O'Connell was trying to do. What
22 was said at the meeting between
23 Mr. O'Connell, Mr. Worship, yourself, and
24 Mr. Prudenti?
25 A. Again, I don't have a verbatim

Christopher Niccolino

2 did he make an unequivocal statement that his
3 client was not going to cooperate?

4 A. Great question. You know, I have a
5 vague recollection of there being some sort
6 of, and I don't want to say -- and I don't
7 even want to use the word, adamant, but the
8 meeting ended rather abruptly when it became
9 clear what his intentions were. He got up.
10 I don't know that he foreclosed the
11 possibility of cooperation, but at least in
12 my mind, and I have no way of knowing what
13 anyone else in the room was thinking, but at
14 least in my mind, it was clear that that
15 wasn't his purpose. He wanted to probe. He
16 didn't want to cooperate.

17 Q. Did you keep --

18 A. Then we went outside, and I made
19 those comments to him.

20 Q. Did you keep any notes of the
21 meeting?

22 A. No, I did not.

23 Q. In dealing --

24 A. Just to back up to my last
25 question. I was surprised. I hold

Christopher Niccolino 33

that was the focus of his comments, and he
never touched upon or made any comments
regarding actually having Mr. Worship
cooperate with the prosecution of this
matter.

Q. Did Mr. O'Connell indicate during
the course of that meeting whether or not his
client, Mr. Worship, was interested in
cooperating with the District Attorney's
Office?

A. Well, that's why I started my
answer off earlier two questions ago. Yes.
The premise that Mr. O'Connell --

Q. Did he indicate, verbally indicate,
that his client, Mr. Worship, was interested
in cooperating or not?

A. Yes. The premise that
Mr. O'Connell came to the meeting and the
words spoken initially were, "Yes, I want my
client to try and cooperate here," but the
actions and the subsequent language that he
used revealed that that was not his
intention.

O. At the point in time when he left

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Christopher Nicolino

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experience, is often a product of their attorney's client relationship; is that right?

A. Well, if you're suggesting that sometimes criminal defendants' judgements are clouded by their counsel regarding the question of cooperation, I agree with you, yes.

Q. The decision by the individual of whether or not to cooperate, like the decision whether or not to plead guilty, whether or not to testify, is one that is ultimately the client's; is that true?

A. That is true, and it should be based on full and complete information and a full and open discourse with their attorney. Something that I believe does not always happen with criminal defense attorneys and their clients.

Q. The attorney who is laboring under a conflict, and the precise conflict that I'm talking about is where they're representing a potential witness and representing the target of the witness, that witness doesn't have the

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Christopher Nicolino

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Mr. O'Connell in high esteem, and his conduct that day kind of surprised me. That's why I made those comments.

Q. In dealing with potential

cooperating defendants, is it relatively common that one of the problematic issues that arises is a conflict with their current attorney? Their current attorney may have a conflict of interest, in that they have relationships with some of the targets in the investigation. Is that a common occurrence?

MR. DUNNE: I'll object to the form as to I don't know what common means, but answer that from your experience in the best way that you can.

THE WITNESS: Okay.

A. It has been my experience that that happens and, you know, I couldn't give you a percentage. I'm reluctant to say often, but that does happen in the context of criminal investigations of criminal conspiracies, yes.

Q. The decision by the individual whether or not to cooperate, in your

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Christopher Nicolino 38

2 defendant wishing to cooperate who's being
3 told not to cooperate by his conflicted
4 lawyer will reach out to one of the
5 detectives or agents in the federal system or
6 somebody else who is a front line law
7 enforcement person.

8 Typically, it doesn't happen,
9 although it has, that they reach out to a
10 prosecutor. That's happened to me. I've had
11 criminal defendants reach out to me directly,
12 but typically, it happens where they reach
13 out to the cop or the agent that they've had
14 the most interaction with, that they know,
15 whose name they know, whose card they might
16 have been given at the time of arrest, or the
17 first time that they were questioned,
18 et cetera. Typically, that's the route, but
19 it happens a lot of different ways.

20 Sometimes they'll use
21 intermediaries. Sometimes they'll use
22 somebody else that they know who might happen
23 to be a police officer or an agent or a
24 detective and say, "Would you contact
25 Detective Jones and let him know I really

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Christopher Nicolino 37

2 benefit of an attorney who is able to advise
3 them --

4 A. Mutually? Objectively?

5 Q. Okay, mutually and objectively
6 about the benefits and pitfalls of
7 cooperation?

8 A. In general terms, I believe that
9 that happens more often than I'd like it to
10 happen.

11 Q. In those contexts, as an Officer of
12 the Court, you are obligated to bring that
13 conflict to a Court and move to have that
14 person disqualified, right?

15 A. Well, now you're getting into
16 questions of timing. Yes, when it becomes
17 clear that the potential criminal defendant
18 wants to cooperate.

19 Q. How does a defendant ever get to
20 that point if they are represented by
21 somebody who is not giving them any
22 advice about that relation?

23 A. Another great question, Mr. Barket.
24 It happens in many, many different ways. The
25 most common way is that the criminal

Christopher Nicollino
2
3 criminal conduct that has happened."

4 Q. Did you bring any notes with you

5 today?

6 A. No.

7 Q. Were you told to?

8 A. No.

9 Q. Were you given a copy of the Notice

10 of Deposition that was served on your

11 attorney?

12 A. No.

13 Q. I take it that you kept notes of

14 your investigation?

15 A. I don't know what you mean by notes

16 of my investigation. Do I have my trial

17 notes? I have a trial notebook. I have a

18 grand jury notebook from the grand jury

19 presentation.

20 Q. When you were interviewing

21 witnesses and supervising the investigation,

22 do you keep any record of what you do?

23 A. No. Do you mean like some sort of

24 formal notebook or log on a computer? No.

MR. BARKET: Just give me a

minute to speak with Mr. Worship.

Christopher Nicollino 39

1 want to cooperate, but I can't do it with my
2 attorney because my attorney's telling me not
3 to cooperate, and it's a problem for me." It
4 can happen a lot of different ways.

5 Q. Have you seen instances where an
6 attorney enters a case and right away with
7 that attorney, there's an application to have
8 the attorney disqualified for this precise
9 conflict, that they're trying to represent
10 somebody that could be a cooperator against
11 some other people in the case?

12 A. At that point in a criminal
13 proceeding, I've not seen that happen, no.
14 You need to develop a record a little further
15 before you can make that application because
16 although there might be an appearance of a
17 conflict, et cetera, you don't have -- the
18 conflict doesn't come to fruition until that
19 criminal defendant says, "Yes, I do want to
20 cooperate with the government. I do want to
21 cooperate with the District Attorney's
22 Office. I do want to take some affirmative
23 step to redeem myself and cooperate and help
24 law enforcement and make amends for the
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Christopher Nicolino

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2 because I was a deputy, and he was a
3 principal, but we've known each other for a
4 long time; and I consider him a colleague and
5 not a subordinate.

6 Q. I'm sure you're very close to him.
7 At some point, did you outrank him?
8 Did that some point include the Fall of '02
9 and the Spring of '03?

10 A. As I said, I believe at that point,
11 I had been promoted to a titled deputy
12 position. So at that point, I was a deputy,
13 and he was principal.

14 Q. When Mr. Worship's indictment was
15 unsealed and the arrests were made, was there
16 any discussion in your office as to whether
17 or not the press should be contacted?

18 A. Not that I'm aware of, but just to
19 answer that question completely, the press,
20 in large part, was aware, unfortunately, of
21 this investigation even in the grand jury
22 stage. I don't know if you recall, or if
23 Mr. Worship recalls, but Ms. Strebel had
24 requested, even though she did not have an
25 absolute right to, had requested to testify

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MR. DUNNE: Okay.
(Whereupon a short recess
was taken at this time.)

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Q. Your position in the Fall of '02
and the Spring of '03 was Deputy Bureau Chief
for the Economic Crime Bureau?

A. I don't know when I actually got
the title. I was functioning in that role.
I believe I had that title at that time. I
believe I got the title some time in the
Spring, Summer of '02, right after Mr. Spota
came in, but initially, the first line that
was open for me in Mr. Spota's administration
was another principal one. So I was
functioning as a deputy but working on a
principal's line, and then the line became
available, and I'm not sure how those things
happen.

Q. Was Mr. Prudenti working underneath
you?

A. Again, I don't know. I would not
characterize it as such. That would be an
unfair characterization, underneath.
Technically, at some point, I outranked him

1 Christopher Nicolino 46
2 significant and that's why I wanted
3 to add it.
4 Besides the kid working, and
5 the rolodex, and the other
6 contacts, and things that we had,
7 and information we had regarding a
8 relationship between Mr. Worship
9 and Mr. Milvid, when we went
10 through the telephone numbers off
11 the rolodex, one of those numbers
12 came back to, that was for
13 Mr. Worship, came back to an
14 asphalt company, L.L.L. or L.I.
15 Industries or something like that
16 and, you know, that's part of the
17 investigation, as you know.
18 We go out, and we subpoena all
19 those records and his phone
20 records, and the other stuff is
21 coming back to Mr. Worship and I
22 think his mom or his sister or
23 something like that, all these
24 other numbers on the rolodex, but
25 one is coming back to this asphalt

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1 Christopher Nicolino 45
2 have a few questions.
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4 MR. BARKET: Just make
5 reference to the question and then
6 complete your answer.
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8 THE WITNESS: Mr. Barket at
9 one point was asking me how
10 Mr. Worship came to our attention
11 and became part of my
12 investigation.
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14 MR. BARKET: I actually just
15 asked you if he did, but go ahead.
16 Explain how.

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Q. Did you have discussions about where you would be working?

A. Not specifically, no.

Q. Once you began in the Economic Crime Bureau, did you have any discussions with Mr. Spota about investigators being appointed to assist in your investigations?

A. You mean, did I get to like draft my own investigators? I'm not -- I don't understand the question.

Q. No. Did you have any discussions with him about, "Well, I'm in this bureau.

We need detectives or investigators or police officers to work with us?"

A. There were. There were under

Mr. Catterson's regime. There were under Mr. Henry's. There were investigators assigned to that bureau. It's an investigative bureau.

Q. Well, do you know when Detective Amato started in that position?

A. Detective Amato was detailed to the Government Corruption Bureau, not the Economic Crime Bureau.

company. And further investigation revealed that that asphalt company had done extensive work in and around the Village of Patchogue or the Highway Department. So, again, you know, that certainly moves him closer into the middle of the radar screen now and further into, shall we say, pursuit.

MR. BARKET: I appreciate

that, and I'm glad you added it because it made me think of a few questions.

FURTHER EXAMINATION BY

MR. BARKET:

Q. When you started in the District Attorney's Office, did you know that you were going to be starting an Economic Crime Bureau?

A. No.

Q. Did you have discussions with Mr. Spota prior to him taking office that you would be joining the office?

A. Yes.

1 Christopher Nicolino 50
2 Department of Insurance at some point, I 51
3 believe. I have a vague recollection of 52
4 that.
5 There's extensive, extensive 53
6 investigative training and experience, 54
7 et cetera. There's also a detectives' 55
8 procedures manual that I think the PD has. I 56
9 think it's available to detective 57
10 investigators working in the Suffolk County 58
11 District Attorney's Office, but there's 59
12 extensive training that all of these 60
13 detective investigators bring with them to 61
14 the DA's office or else they don't get hired.
15 Q. How do you know that?
16 A. Because, I believe, the civil 62
17 service spec calls for a certain number of 63
18 years of investigative experience. You can't 64
19 just graduate high school and go work as a 65
20 detective investigator for the DA's office.
21 It doesn't happen that way. And, of course, 66
22 you need your certification from the police 67
23 conference as a police officer.
24 Q. So the detective investigator 68
25 positions with the District Attorney's Office 69

1 Christopher Nicolino 49
2 Q. How about Detective Icapelli?
3 A.. He was detailed to the Government
4 Corruption Bureau, not the Economic Crime
5 Bureau.
6 Q. Did you have any role in their
7 assisting in this investigation? Did you get
8 to select them in any way?
9 A.. No.
10 Q. They were assigned there by
11 somebody else?
12 A.. They were assigned this
13 investigation by somebody else; is that your
14 question?
15 Q. Right.
16 A.. Yes.
17 Q. Who?
18 A.. I don't know.
19 Q. Do you know what training, if any,
20 they were given?
21 A.. They have extensive training with
22 law enforcement. Detective Amato, I believe,
23 was homicide detective. I think he worked in
24 other positions also. I think he worked as
25 an insurance investigator too for the

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Christopher Nicollino

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Christopher Nicollino

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Henry regarding Mr. Worship?

A. Because his potential cooperation had not matured to the point where that would be necessary, where we would either have to seek recusal of Mr. O'Connell or an appointment of shadow counsel for Mr. Worship or any of those other measures because we weren't there yet.

Q. Is that a condition precedent to your going to see Judge Henry?

(Continued on next page to accommodate jurat.)

EXAMINATION BY
MR. DUNNE:

Q. I just want to clarify one point for the record.

Would you indicate, did you ever go to the impaneling grand jury judge for the special grand jury with regard to Mr. Worship?

A. No. With regard to Mr. Worship, I did not speak to Justice Henry. With regard to other issues, I did.

Q. Why did you not speak to Judge

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Christopher Nicolino 53
A. Of course, as I explained to
3 Mr. Barket.
4 MR. DUNNE: I don't have
5 anything further.
6 Thank you.
7 MR. BARKET: Thank you.
8 -000-
9 (Whereupon, the examination
10 of Christopher Nicolino was
11 concluded at 12:33 p.m.)
12
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14 _____
15 CHRISTOPHER NICOLINO
16
17 Subscribed and sworn to
18 before me this _____ day
19 of _____, 2007.
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21 _____
22 NOTARY PUBLIC
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I, EILEEN SAVINO, a Notary Public
within and for the State of New York, do
hereby certify:

That the witness(es) whose testimony
is hereinbefore set forth was duly sworn by
me, and the foregoing transcript is a true
record of the testimony given by such
witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

EILEEN SAVINO

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